



Mechanism for International
Criminal Tribunals

Case no.: MICT-12-16-R

Date: 16 July 2015

Original: FRENCH

IN THE BENCH

Before: Judge Theodor Meron, Presiding
Judge Jean-Claude Antonetti
Judge Carmel Agius
Judge Christoph Flügge
Judge Burton Hall

Registrar: Mr John Hocking

Order of: 16 July 2015

In the proceedings of

ELIÉZER NIYITEGEKA

v.

THE PROSECUTOR

PUBLIC DOCUMENT

**FIRST PART OF THE DISSENTING OPINION OF JUDGE JEAN-CLAUDE
ANTONETTI TO THE DECISION OF 13 JULY 2015**

The Applicant:

Mr Eliézer Niyitegeka

Office of the Prosecutor:

Mr Hassan Bubacar Jallow, Prosecutor

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A handwritten signature in black ink, appearing to read 'McCall Carter', written over a white background within a black rectangular box.

The review Chamber decided to dismiss the request for review submitted by **Eliézer Niyitegeka** and assigned counsel to him.¹

I consider assigning counsel in this case to be an excellent decision because it will enable the attorney in question to file a new request for review. However, I fundamentally disagree with the dismissal of the request for review because it gravely prejudices the convicted person, whose submissions in the request for review were not taken into consideration by the review Chamber. This concerns notably the request to lift protective measures for a protected witness and a consideration of the merits of his arguments.

The merits could not be considered because the Canadian proceedings were conducted in French, a language that the majority of the judges in the review Chamber do not understand. As part of the judge's oath and the code of professional conduct, a judge must study the arguments of the applicant, which is what I have done in this case. The 800 and more pages of proceedings should have been translated into English so that the review Chamber could have a precise understanding of the merits of the request for review.

Since I believe that the contents of the Canadian proceedings are of particular relevance, I have no choice but to study in depth the first-instance proceedings, the Appeal Judgement that was rendered and also the other cases in which the protected witness had testified.

Consequently, this entails a considerable amount of work that I simply cannot do in a few weeks time because, to recall, the request for review was officially filed only this year and in the case at hand, there was no need to rush; it seems that the majority has confounded the terms "expeditious" and "rushed".

With regard to my agreement with the assignment of counsel even though I had objected to the initial request, I wish to explain myself further below. Firstly, I supported the decision of the review Chamber to dismiss the request for assignment of counsel and issued a concurring opinion² because at the time it seemed to me that the arguments in support of the request³ were insufficient to grant it.

¹ *Eliézer Niyitegeka v. The Prosecutor*, MICT-12-16-R, "Decision on Niyitegeka's Request for Review and Assignment of Counsel", 13 July 2015.

² *Eliézer Niyitegeka v. The Prosecutor*, MICT-12-16-R, Concurring opinion to the "Decision on Niyitegeka's Request for Assignment of Counsel", 6 November 2014.

³ *Eliézer Niyitegeka v. The Prosecutor*, MICT-12-16-R, "Request for Order to Assign Counsel to Represent the Interests of Eliézer Niyitegeka", 29 April 2014.

It was only later, after the request for review was submitted by the convicted person⁴ and I learnt of the existence of new facts resulting from the Canadian and American proceedings, that I considered it necessary to support the assignment of counsel in order to, on the one hand, enable the convicted person to supplement his initial request and, on the other, to enable his lawyer to provide in his new submission more information on the American proceedings that had been briefly mentioned. In regard to these proceedings, it would have been interesting for the review Chamber to have been able to examine the exhibits used in support of the request for asylum.

For the foregoing reasons, I deem that the assistance of an attorney is absolutely necessary because the convicted person will certainly not be able to provide all of these facts himself from deep inside his cell in Mali.

This first part of the opinion has been filed on this day and the second part will be filed as soon as I have completed a substantive examination of all of the aforementioned cases.

Done in English and French, the French version being authoritative.

/signed/

Judge Jean-Claude Antonetti

Done this sixteenth day of July 2015

The Hague
Netherlands

[Seal of the Tribunal]



⁴ *Eliézer Niyitegeka v. The Prosecutor*, MICT-12-16-R, “Request for Review of Eliézer Niyitegeka’s Judgement”, 1 April 2015.